

ARIZONA  
COMMISSION ON  
JUDICIAL CONDUCT

ADMINISTRATIVE  
POLICIES

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## CONTENTS

Policy	Page
1. Commencement of investigation without written complaint (Sept. 1983).....	1
2. Assignment of complaints involving the same judge (July 1984).....	1
3. Complaints against multiple judges (May 1991, rev. Aug. 2006).....	1
4. Investigation of old complaints (Sept. 1993).....	1
5. Time for commencing investigation of disabilities (Sept. 1993).....	2
6. Withdrawn complaints (Feb. 2002) .....	2
7. Record retention guidelines (Feb. 2002, rev. Aug. 2006).....	2
8. Response to judge's inquiry (Aug. 1983).....	3
9. Disclosure of confidential information (Jan. 2000, rev. Sept. 2006).....	3
10. Responsibilities of absent members (Aug. 1989) .....	3
11. Preparation of press releases (April 1985).....	4
12. Judicial Ethics Advisory Committee (1990).....	4
13. Staff leave (Sept. 1992) .....	4
14. Education assistance (Aug. 1996).....	4
15. Photocopy charges (May 2000) .....	4
16. Sole source procurement of outside counsel (May 2000).....	4
17. Requests for judge's response (July 2002) .....	5
18. Complaints against commission members (Aug. 1993, rev. June 2005).....	5
19. Disciplinary alternatives (Feb. 2009).....	5
20. HR Manual and Code of Conduct for Judicial Employees (Jan. 2013).....	6

21. Executive Director Assistance to Disciplinary Counsel; Limitation as to Assistance to Hearing Panels (May 2013) .....	7
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## **ADMINISTRATIVE POLICIES**

The Commission on Judicial Conduct has adopted the following administrative policies in accordance with Rule 4(d) of the commission's rules.

### **1. Commencement of investigation without written complaint.**

When the conduct of a judge is brought to the attention of the commission by the news media or some other public source, and the conduct appears to be within the jurisdiction of the commission, the executive director may ask the chair for authorization to open a file and commence an investigation without a written complaint.

### **2. Assignment of complaints involving the same judge.**

When a complaint is received on a judge who is already the subject of a pending investigation, the executive director should assign the new matter to the same member who is reporting on the pending case.

### **3. Complaints against multiple judges.**

The executive director may use the following guidelines to determine when to separate or consolidate complaints involving multiple judges.

(a) If a complaint names more than one judge and alleges facts that apply to all of the judges (e.g., "every judge involved in the underlying litigation was biased"), the complaint may be processed as a single case.

(b) If a complaint names more than one judge but alleges different or unrelated facts that apply to the individual judges (e.g., "the first judge was biased and the second failed to rule promptly"), separate files may be opened and the cases processed separately.

(c) Conversely, related complaints against one or more judges may be consolidated for administrative and statistical purposes when any of the following conditions exist:

- (1) A complainant files separate complaints against different judges but repeats essentially the same facts in each complaint;
- (2) A complainant repeatedly files the same complaint after each stage of the underlying litigation, creating what amounts to a serial complaint; or
- (3) Different complainants file separate complaints against the same judge but investigation reveals that they are all parties, friends of parties, or witnesses who observed the same incident.

### **4. Investigation of old complaints.**

As a general rule, the commission will not investigate complaints involving allegations of misconduct that occurred more than three years prior to the date of the complaint, unless the allegations involve a long-term pattern of misconduct. It is difficult and unfair to require a judge to respond to a complaint involving conduct that occurred so far in the past that neither the judge nor the witnesses, if any still exist, would be able to accurately

remember the incident. This is especially true if the alleged misconduct took place during a court proceeding for which records may no longer exist.

## **5. Time for commencing investigation of disabilities.**

Article 6.1, section 4 of the state constitution gives the commission jurisdiction to recommend to the supreme court that a judge be retired for a disability that seriously interferes with the performance of his or her duties when the disability is or is likely to become permanent. Under this provision, the commission may initiate an investigation of a potential disability at any time; however, in the absence of any statutory guidelines governing judicial disabilities, it is the policy of this commission to initiate such an investigation whenever a judge is unable to perform a substantial portion of his or her judicial duties for a period of more than three consecutive months. It is also the policy of the commission to encourage judges to report any illness that may affect their performance on the bench for an extended period of time.

## **6. Withdrawn complaints.**

A complaint that is frivolous, unfounded, solely appellate in nature or outside the commission's jurisdiction may be withdrawn at the request of the complainant and the judge will not be notified of the complaint. A complaint that merits preliminary investigation or one in which the judge has already been notified may be withdrawn only at the discretion of the commission. When a complaint is withdrawn, the case file and the related record in the commission's management information system shall be marked with an appropriate notice, and neither the commission nor the judge shall be required to disclose the complaint in any future inquiry or proceeding.

## **7. Record retention guidelines.**

The following guidelines govern the preservation of commission records relating to complaints against judges.

(a) The executive director shall maintain permanent records of all complaints filed with the commission. Permanent records in dismissed cases include the initial complaint, the judge's response, if any, investigative reports, and the dispositional order. In addition to these documents, permanent records in cases resulting in informal or formal sanctions include case-related correspondence, pleadings and exhibits, if any, and copies of all documents transmitted to the supreme court.

(b) The paper version of permanent records may be destroyed only if the records have been saved as digital images capable of being electronically reproduced and material information from the case summary and file data entry sheets has been correctly entered into the commission's automated management information system.

(c) The paper version of permanent records shall be retained for a minimum of ten years, except for the following:

- (1) Complaints that are dismissed may be purged and destroyed five years after final disposition.

- (2) Complaints resolved by informal discipline may be purged and destroyed five years after final disposition if the respondent judge is deceased, has passed the mandatory retirement age, where applicable, or has been retired for three years without holding a judicial position or being called back to active service.
- (3) Complaints resolved by formal discipline may be purged and destroyed 15 years after final disposition or after five years if the respondent judge is deceased.

(d) The paper version of non-permanent records, such as internal working papers, memoranda to staff and legal research notes or documents, may be destroyed without being saved as digital images.

(e) Court pleadings, transcripts or other records and documents submitted as attachments to complaints or responses that are not essential to an investigation or a formal proceeding may be destroyed or returned to complainants or respondents at any time.

(f) Electronic records, such as tape recordings or videotapes, may be destroyed at the same time as corresponding paper records without being saved as digital images, except that original tapes related to court proceedings will be returned to the court of origination for maintenance or destruction in accordance with that court's policy.

(g) A copy of all digital and electronic records shall be kept in the commission's office, and a duplicate copy shall be kept at an off-site location.

#### **8. Response to judge's inquiry.**

Upon inquiry, the executive director may inform a judge that a complaint has been filed, that the matter is under investigation, and that the commission has or has not yet determined if the complaint has any substance. The executive director may also explain that the judge will be notified, given a copy of the complaint, and asked to respond to the complaint in writing if a response is needed in order to resolve the matter. As a general rule, however, the identity of the complainant will not be disclosed to the inquiring judge until the judge is asked to respond.

#### **9. Disclosure of confidential information.**

As of January 20, 2006, all complaints against judges must be made public but with varying degrees of disclosure. Rule 9(c) also permits the commission to disclose confidential information in response to official requests from agencies and other organizations involved in criminal prosecutions, bar discipline, or selection and retention proceedings. Cases filed prior to that date are governed by the policy then in effect, which permits disclosure of only those disciplinary actions that reflect on a judge's ability, character or fitness for public office.

#### **10. Responsibilities of absent members.**

Members who cannot attend a commission meeting should notify the executive director as soon as possible and submit summaries of and recommendations for the cases

they are assigned to review. The executive director will present the absent members' reports at the meeting.

**11. Preparation of press releases.**

When the commission files recommendations with the supreme court, the executive director shall prepare a news release containing a brief summary of the recommendations and, when feasible, shall deliver or transmit a copy to the judge before it is released to the press. Copies of the news release should also be distributed to the members of the commission.

**12. Judicial Ethics Advisory Committee.**

The commission's office may be used as the mailing address for the Judicial Ethics Advisory Committee and requests for advisory opinions may be processed by the commission's staff pursuant to Rule 82 of the Rules of the Supreme Court.

**13. Staff leave.**

The commission shall follow the leave policy adopted by the Administrative Office of the Courts, with the exception that the commission and not the employee shall determine the method for payment of accrued leave. *See* AOC Policies and Procedures Manual, Section 6.10.

**14. Education assistance.**

The commission shall follow the education assistance policy adopted by the Administrative Office of the Courts, with the exception that it will reimburse 100 percent of tuition, registration fees and related lodging, per diem and travel costs for college or university courses endorsed by the Judicial College of Arizona as part of a continuing education, judicial studies or court management program.

**15. Photocopy charges.**

The commission may impose a fee for preparing copies of pleadings, opinions, or other public records that are not confidential. The fee shall be the same as that charged by the clerk of the supreme court, which is fifty cents per page as of January 1, 2002. The fee may be waived for single copies or small orders that require minimal time to process.

**16. Sole source procurement of outside counsel.**

From time to time, the commission may hire outside counsel to assist its staff attorney in the prosecution of complex cases in formal proceedings. Since the commission's budget for legal services is severely limited, outside attorneys are usually hired on fixed price contracts that require the pro bono contribution of any services that exceed a certain amount. In light of this provision, the executive director of the commission or any of its officers may solicit and enter into contracts directly with potential candidates without competitive bidding in accordance with Rule 40 of the Procurement Rules for the Judicial Branch adopted by the Arizona Supreme Court.

#### **17. Request for judge's response.**

The commission may disclose a judge's response to a complainant at any time. As a general policy, however, a judge's response will not be released without a written request from the complainant. The executive director shall review each request and decide, on a case-by-case basis, to disclose the judge's response to the complainant or to forward the request to the commission for review. Judges shall be advised that their responses may be disclosed to complainants. (Approved July 19, 2002).

#### **18. Complaints against commission members.**

Complaints against commission members shall be processed in the same manner as other complaints, but may not be dismissed by the executive director or considered by the commission in the presence of the member under investigation. If a case involves confidential information, a complaint shall be listed on the agenda without revealing the identity of the complainant, and the executive director shall make a confidential report to the commission.

#### **19. Disciplinary Alternatives**

The following guidelines shall apply when issuing dispositions and sanctions pursuant to Rules 16, 17 and 18 of the commission's rules.

(a) Rule 16(a) allows the commission to dismiss a complaint that fails to allege an act of judicial misconduct, lacks sufficient evidence to support an investigation, is solely appellate in nature, or is otherwise frivolous, unfounded or outside the commission's jurisdiction. A dismissal shall be in the form of a notice or order indicating the reason for the commission's action.

(b) Rule 16(a) also allows the commission to dismiss a complaint with comments reminding a judge of ethical obligations or recommending changes in the judge's behavior or procedures. A dismissal with comments shall be in the form of a notice or order indicating the reason for the commission's action, supplemented with a confidential letter to the judge in one of the following forms:

- (1) A friendly advisory letter explaining that even though the judge's conduct did not technically violate the code, it suggested an appearance of impropriety that could be avoided in the future if the judge is willing to modify his or her behavior or court procedures as recommended by the commission;
- (2) A stern warning letter that draws the judge's attention to the potential consequences of persistent behavior that does not rise to the level of judicial misconduct but nonetheless creates an appearance of impropriety; or
- (3) Any other appropriate written communication that conveys the commission's concerns about the conduct of the judge.

(c) Rule 16(b) allows the commission to recommend additional forms of discipline in conjunction with informal and formal sanctions including, but not limited to, profes-



sional counseling, judicial education, mentoring, or other similar activities such as addiction recovery or rehabilitation programs.

(d) Rule 16(c) allows the commission to confer confidentially with a judge at any time to discuss disciplinary alternatives including voluntary retirement or resignation. The commission may invite a judge to meet privately with the full commission or it may delegate this responsibility to one or more members of the commission or its staff.

(e) Rule 17 allows the commission to reprimand a judge without a formal hearing for conduct that is unacceptable, under one of the grounds for judicial discipline, but not so serious as to warrant formal proceedings or further discipline by the supreme court. A reprimand is a public rebuke for conduct that usually, but not always, involves an isolated incident or easily-corrected behavior.

(f) Rule 18(a) allows the commission to recommend to the supreme court that a judge be censured for misconduct. From the commission's perspective, a censure is a stern public rebuke for serious misconduct that may have occurred only once or infrequently but is too offensive to ignore or to resolve informally. A censure may also serve as a public warning to other judges.

(g) Rule 18(a) also allows the commission to recommend to the supreme court that a judge be suspended for misconduct. From the commission's perspective, suspension is a temporary sanction involving the suspension of judicial privileges and compensation for egregious or repetitive misconduct that does not require removal from judicial office.

(h) Rule 18(a) further allows the commission to recommend to the supreme court that a judge be removed for misconduct in office. From the commission's perspective, removal is appropriate for extreme or gross misconduct involving a judge's integrity, fitness for office, substantial harm to public confidence and trust, damage to the reputation of the judiciary, or the ability to perform judicial duties.

## **20. HR Manual and Code of Conduct for Judicial Employees**

Commission administrative policies 13 (staff leave) and 14 (education assistance) are repealed.

The Commission adopts the *Human Resources Policies and Procedures of the Arizona Commission on Judicial Conduct*, effective January 1, 2013.

HR Policy and Procedure 6.18 (Tuition Reimbursement) is suspended until such time as the Supreme Court reinstates its tuition reimbursement policy.

Effective January 1, 2013, Commission staff shall comply with the *Code of Conduct for Judicial Employees* as it may be amended from time to time, subject to the following modifications:

1. Rules that refer to a "court" or "the courts" shall be interpreted to refer to the Commission. Rule 2.6, for example, refers to providing litigants' assistance related to "the court's resources and procedures" and should be interpreted to reference the Commission's resources and procedures.

2. The executive director, disciplinary counsel, and administrator shall not be considered “court managers” as that term is used in the *Code* as their conduct cannot reasonably be interpreted as official acts or positions of the judiciary.
3. Rule 2.9 shall only apply in the context of formal judicial discipline and disability proceedings and the reference to “judge” in the rule shall be interpreted to mean Commission members.
4. Rule 2.11(C) shall require a member of the Commission staff to inform the executive director and Commission chair of any potential conflict of interest, involvement, or activity of the staff member in a complaint or case pending before the Commission as otherwise required pursuant to the text of that rule.
5. The Commission chair may authorize staff members, notwithstanding the terms of Rule 3.1, to engage in volunteer activities sponsored by organizations or governmental entities that concern the law, the legal system, or the administration of justice. For example, the executive director has and continues to be authorized to serve as a member of the Arizona Supreme Court’s Attorney Regulation Advisory Committee and as a volunteer attorney hearing panel member in the lawyer discipline process.

(adopted August 10, 2012; effective January 1, 2013)

## **21. Executive Director Assistance to Disciplinary Counsel; Limitation as to Assistance to Hearing Panels**

Nothing in the Commission Rules shall be interpreted to prevent the Executive Director from participating fully in the investigative and prosecutorial functions of the Commission, including formal proceedings.

The Executive Director may not advise a hearing panel of the Commission convened for a formal disciplinary proceeding as to any matter in which the Executive Director has participated in the investigative and prosecutorial functions of that matter.